

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

| | | |
|--|---|----------------------------|
| Michael Nolan, #30230-074 |) | C/A No.: 4:07-1141-JFA-TER |
| |) | |
| Plaintiff, |) | |
| v. |) | ORDER |
| |) | |
| Matthew Hamidullah, Warden of FCI Estill; |) | |
| M. Rivera, Warden of FCI Estill; Katheryn |) | |
| Mack, Supervisor of Education at FCI Estill; |) | |
| Estill Federal Correctional Institution; |) | |
| Alberto R. Gonzales, U.S. Attorney General; |) | |
| Harley G. Lappin, Director of Bureau of |) | |
| Prisons; Ray Holt, BOP Regional Director; |) | |
| Harrell Watts, National Inmate Appeals, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The *pro se* plaintiff, Michael Nolan, is an inmate at the Federal Correctional Institution in Estill, South Carolina. He initiated this action pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), which is analogous to a claim against state officials pursuant to 42 U.S.C. § 1983.

The plaintiff has filed a motion for a temporary injunction. He contends that he is legally blind and that the Bureau of Prisons and the Attorney General have failed to comply with statutory provisions that protect disabled persons. Plaintiff claims that as a result of this discrimination, he has been delayed in progressing in his G.E.D. classes. He also seeks to be returned to his previous pay grade for his prison work.

The Magistrate Judge assigned to this action¹ has prepared a comprehensive Report and Recommendation wherein he suggests that the motion for temporary injunction be denied because the plaintiff fails to show he is entitled to the extraordinary relief of a preliminary injunction. The Magistrate Judge also recommends that defendant Estill Federal Correctional Institution be dismissed as an improper party. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on May 21, 2007. He did not file timely objections² to the Report.

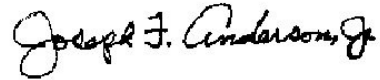
After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and the plaintiff's motion for a temporary injunction is denied. Defendant Estill Federal Correctional Institution is hereby dismissed without prejudice and without issuance and service of process.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

² Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).

Service of process shall issue, however, for the remaining defendants and the Clerk shall return this file to the Magistrate Judge.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

June 12, 2007
Columbia, South Carolina